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In the Supreme Court of the United States

OCTOBER TERM, 1965

HONORABLE STEPHEN S. CHANDLER, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA, PETITIONER

v.

JUDICIAL COUNCIL OF THE TENTH CIRCUIT OF THE UNITED STATES

ON MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS, AND PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS

SUPPLEMENTAL MEMORANDUM FOR RESPONDENT

THURGOOD MARSHALL,
Solicitor General,
Department of Justice,
Washington, D.C., 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1965

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SUPPLEMENTAL MEMORANDUM FOR RESPONDENT

This supplemental memorandum is submitted in response to matters raised in petitioner's reply to the earlier Memorandum filed on behalf of the Judicial Council.

The Judicial Council's order of February 4, 1966, issued pursuant to its authority under 28 U.S.C. 137 after Judge Chandler had declined to attend a hearing, had two parts:

(1) As to pending cases, the Council, taking note of Judge Chandler's expressed wish to dispose of his

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current docket, authorized him to do so. Such action was clearly not coercive in that Judge Chandler was to take the very action he desired.

(2) As to new business, the Council adopted an assignment order, signed by all the active district judges in the Western District of Oklahoma except Judge Chandler, pursuant to which new judicial business in the district would not, until further order, be assigned to Judge Chandler. The Council took this action because, in its view, the condition of Judge Chandler's docket made it advisable that he substantially reduce that docket before undertaking new judicial business. In addition, Judge Chandler, in a letter written to the other active judges of his district and in his "Renewal of Application for Stay" filed in this Court (p. 6), had agreed with this course. Again, such action was not coercive because Judge Chandler, acting with the active district judges, agreed to the effective part of the Council's order and, indeed, represented his agreement to this Court.

In his reply to the Council's Memorandum, petitioner, however, now asserts that his agreement with the order assigning no new cases to him until further order was expressed only for reasons of "strategy," *i.e.*, that he so agreed in an attempt to deprive the Judicial Council of jurisdiction over the administration of the docket of the Western District of Oklahoma. It is not clear from petitioner's reply whether Judge Chandler is, in fact, willing and able to take on the assignment of new cases at the present time.

In these circumstances, the Judicial Council continues to believe it advisable that Judge Chandler substantially dispose of his pending docket before undertaking the assignment of new judicial business. At such time in the future as Judge Chandler certifies to the Council that he has substantially disposed of the business before him which is ready for disposition, and that he is willing and able to undertake new business, the Council will consider the modification of the present order to permit such business to be assigned to Judge Chandler. The Council believes that its present order, thus withholding the assignment of new business to Judge Chandler until his current docket is significantly reduced, is clearly authorized by 28 U.S.C. 137 and 332. We respectfully submit, therefore, that the petition for prohibition and/or mandamus be denied or, in the alternative, that the Court issue an order retaining the case upon its docket until such time as the Council acts upon any future certification by Judge Chandler of his readiness to participate in the assignment of new cases.[1]

THURGOOD MARSHALL,
Solicitor General.

MARCH 1966.

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[1] In our original Memorandum in response to the petition we suggested that the petition had become moot because the Council order of December 13, 1965, had been superseded by its order of February 4, 1966. In view of Judge Chandler's subsequent expressed disagreement with the February 4 order, and the relationship between these two orders, we agree that the case can no longer be deemed moot.

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